

# **Defense Federal Acquisition Regulation Supplement**

## **Part 225—Foreign Acquisition**

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### **SUBPART 225.11--SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

*(Revised June 6, 2000)*

#### **225.1101 Acquisition of supplies.**

(1) Use the provision at 252.225-7000, Buy American Act--Balance of Payments Program Certificate, instead of the provision at FAR 52.225-2, Buy American Act--Balance of Payments Program Certificate. Use the provision in any solicitation that includes the clause at 252.225-7001, Buy American Act and Balance of Payments Program.

(2) Use the clause at 252.225-7001, Buy American Act and Balance of Payments Program, instead of the clause at FAR 52.225-1, Buy American Act--Balance of Payments Program--Supplies, in solicitations and contracts for supplies or services that require the furnishing of supplies.

(i) Do not use the clause if an exception to the Buy American Act or Balance of Payments Program is known to apply or if using the clause at 252.225-7007, Buy American Act--Trade Agreements--Balance of Payments Program; 252.225-7021, Trade Agreements; or 252.225-7036, Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program.

(ii) The clause need not be used if nonqualifying country end products are ineligible for award, including--

(A) End products restricted to domestic or domestic and qualifying country sources under appropriations and authorization act restrictions (see Subpart 225.70);

(B) End products restricted to domestic or domestic and Canadian sources (see Subpart 225.71); and

(C) End products restricted under the authority of FAR 6.302-3.

(iii) The clause may be used if the contracting officer anticipates a waiver of the restriction in paragraph (2)(ii)(A) or (B) of this section.

(3) Use the clause at 252.225-7002, Qualifying Country Sources as Subcontractors, in solicitations and contracts that include one of the following clauses:

(i) 252.225-7001, Buy American Act and Balance of Payments Program.

(ii) 252.225-7007, Buy American Act--Trade Agreements--Balance of Payments Program.

(iii) 252.225-7021, Trade Agreements.

(iv) 252.225-7036, Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program.

(4) Use the provision at 252.225-7003, Information for Duty-Free Entry Evaluation, in solicitations that include the clause at FAR 52.225-8, Duty-Free Entry. Use the

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provision with its Alternate I when the clause at 252.225-7021, Trade Agreements, is used.

(5) Use the provision at 252.225-7006, Buy American Act--Trade Agreements--Balance of Payments Program Certificate, instead of the provision at FAR 52.225-6, Trade Agreements Certificate, in all solicitations that include the clause at 252.225-7007, Buy American Act--Trade Agreements--Balance of Payments Program.

(6) Except as provided in paragraph (11) of this section, use the clause at 252.225-7007, Buy American Act--Trade Agreements--Balance of Payments Program, instead of the clause at FAR 52.225-5, Trade Agreements. The clause need not be used where purchase from foreign sources is restricted (see 225.401(b)(ii)). The clause may be used where the contracting officer anticipates a waiver of the restriction.

(7) Use the clause at 252.225-7008, Supplies to be Accorded Duty-Free Entry, in solicitations and contracts that provide for duty-free entry and that include the clause at FAR 52.225-8, Duty-Free Entry.

(8) Use the clause at 252.225-7009, Duty-Free Entry--Qualifying Country Supplies (End Products and Components), in solicitations and contracts for supplies and in solicitations and contracts for services involving the furnishing of supplies, except for solicitations and contracts for supplies for exclusive use outside the United States.

(9) Use the clause at 252.225-7010, Duty-Free Entry--Additional Provisions, in solicitations and contracts that include the clause at FAR 52.225-8, Duty-Free Entry.

(10) Use the provision at 252.225-7020, Trade Agreements Certificate, in all solicitations that include the clause at 252.225-7021, Trade Agreements.

(11) Use the clause at 252.225-7021, Trade Agreements, instead of the clause at FAR 52.225-5, Trade Agreements, when acquiring information technology products in Federal Supply Group 70 or 74.

(12) Use the provision at 252.225-7035, Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program Certificate, instead of the provision at FAR 52.225-4, Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program Certificate, in all solicitations that include the clause at 252.225-7036, Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program.

(i) Use the basic provision when the basic clause at 252.225-7036 is used.

(ii) Use the provision with its Alternate I when the clause at 252.225-7036 is used with its Alternate I.

(13) Use the clause at 252.225-7036, Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program, instead of the clause at FAR 52.225-3, Buy American Act--North American Free Trade Agreement--Israeli Trade Act--Balance of Payments Program. The clause need not be used where purchase from foreign sources is restricted (see 225.401(b)(ii)). The clause may be used where the contracting officer anticipates a waiver of the restriction.

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(i)(A) Use the clause in all solicitations and contracts for the items listed at 225.401-70, when the estimated value is \$54,372 or more and the Trade Agreements Act does not apply. Include the clause in solicitations for multiple line items if any line item is subject to NAFTA.

(B) Use the clause with its Alternate I when the estimated value is between \$25,000 and \$54,372.

(ii) Application of the procedures in 225.402 and the acquisition of noneligible and eligible products under the same solicitation may result in the application of the North American Free Trade Agreement Implementation Act to only some of the items solicited. In such case, indicate in the Schedule those items covered by the Act.

(14) Use the clause at 252.225-7037, Duty-Free Entry--Eligible End Products, in solicitations and contracts for supplies and services when the clause at 252.225-7007, Buy American Act--Trade Agreements--Balance of Payments Program; 252.225-7021, Trade Agreements; or 252.225-7036, Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program, is used.

#### **225.1103 Other provisions and clauses.**

(1) In order to allow accurate reporting, by cognizant accounting and disbursing officers, of foreign and domestic expenditures, use the clause at 252.225-7005, Identification of Expenditures in the United States, in all negotiated contracts over \$25,000 where--

(i) For supply contracts, the contract requires end products manufactured or produced in the United States; and

(A) The contractor is a foreign concern; or

(B) The contractor is a domestic concern and the Government will take title outside the United States.

(ii) For contracts for construction, repair, and maintenance of real property, or services to be performed outside the United States--

(A) The contractor is a domestic concern; or

(B) The contractor is a foreign concern and the contract requires acquisition of materials, equipment, or services from U.S. sources.

(2) Use the clause at 252.225-7041, Correspondence in English, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.

(3) Use the clause at 252.225-7042, Authorization to Perform, in solicitations and contracts when contract performance will be wholly or in part in a foreign country.